more v. Vicksburg, etc., Ry. Co., 85 Miss. 426. These cases have been severely criticised, MECHEM, § 1907 *seq.*, and are in the minority. Note to *Barmore v. R. R., supra,* in 70 L. R. A. 627. In this case an engineman of defendant's had been furnished with a hand-car for the purpose of gathering chips to run his engine. Having gone beyond the location of the chips at the request of a friend, clearly a departure, and while on his way back to that place, he ran into and injured plaintiff. In spite of the fact that he had not yet reached the location of the chips, the court held that he was acting within the scope of his employment and the master was liable. It would seem that the able dissenting opinion of Whitfield, Ch. J., represents the overwhelming weight of authority, which is in accord with the principal case.

NEGLIGENCE—RES IPSA LOQUITUR.—While drinking "Whistle," the plaintiff was injured by broken glass in the bottle. He sued the defendant, who put up the beverage, for negligence. To support his case he relied on the doctrine of *res ipsa loquitur.* The defendant sought to rebut the presumption of negligence raised thereby by showing that under its process of bottling and inspection there could be no broken glass in its bottles when put on the market. When a judgment was given against the defendant on a jury verdict, he appealed, claiming that by his evidence he had rebutted the presumption raised by the doctrine of *res ipsa loquitur,* and therefore the verdict was unsupported by evidence. *Held,* that under the circumstances the question was properly left to the jury. *Goldman & Freiman Bottling Co. v. Sindell* (Md., 1922), 117 Atl. 866.

Where all the facts attending an injury are disclosed and nothing remains for inference, no presumption can be indulged in and the doctrine of *res ipsa loquitur* has no application. *Gibson v. International Trust Co.,* 177 Mass. 100. A clear example of this arises when a defendant shows that the injury was due to the fault of a third party. But if the defendant merely offers general evidence tending to show that he has exercised due care, it would seem only fair that the question should be left to the jury. For even if it be conceded that the plan of the manufacturing process shows proper diligence, this does not preclude negligence on the part of the defendant or his agents in carrying it out. Accordingly, on facts similar to those in the principal case a court making a like holding said, in *Davis v. Van Camp Packing Co.* (Iowa), 176 N. W. 382, that while the defendant had shown a proper process of manufacture, "It does not appear that the method was always adhered to by the defendant's employees." The time that it was not adhered to might be the cause of the injury in question. In *Crigger v. Coca-Cola Bottling Co.,* 132 Tenn. 545, another case squarely in point, the court held that the question of negligence should be left to the jury, but that since the jury had found as a fact that there was no negligence the judgment should not be overthrown. Another recent authority is *Riecke v. Anheuser-Busch Brewing Assn.* (Mo.), 227 S. W. 631, in which the only proof of negligence was that a bottle exploded, injuring the plaintiff, while the defendant was showing her through his bottling plant.

In this case the court refers to a consideration that should give strong support to the reasonableness of the decision in the instant case; namely, that in cases of this class the facts giving rise to the negligent act are peculiarly within the knowledge of the perpetrator.

RATES—INDIVIDUAL CITY OR REGION AS THE UNIT IN FIXING.—A Wisconsin statute entitles the users to a judicial review on the question whether a rate promulgated by the commission is a lawful rate. The Wisconsin-Minnesota Light and Power Company, a defendant, furnishes power and current to some thirty cities and towns in the state. Defendant commission, in fixing the rate, treated the cities as a unit. On contest of the rate by the cities of Eau Claire and Chippewa Falls, *held,* the municipality is the entity on the one hand and the utility is the entity on the other for the purpose of establishing just and reasonable rates. *City of Eau Claire et al. v. Railroad Commission et al.* (Wis., 1922), 189 N. W. 476.

Where the rate is fixed by legislative authority, the utility cannot complain if the return on its whole property is fair and reasonable, although as to some consumers it will be furnishing services at a loss, *Lincoln Gas and Electric Company v. Lincoln,* 182 Fed. 926; or, as to some parts of the system, the rate will not pay the cost of carriage, *Puget Sound Traction, Light and Power Company v. Reynolds et al.,* 244 U. S. 574. See 13 MICH. L. REV. 407 and 676, as to the scope of and the limitations upon this rule. From the standpoint of the public, in the absence of statute giving the right, the users cannot complain in court on the ground that the rate fixed by the legislature is unreasonably high as to them, since the granting of any rate above that necessary to protect the constitutional rights of the company is a matter of legislative policy, and when fixed is done by the public's agency for the purpose, and no constitutional rights are violated. *Brooklyn Union Gas Company v. City of New York,* 100 N. Y. Supp. 570, 188 N. Y. 334; *St. Paul Book and Stationery Co. v. St. Paul Gaslight Company,* 130 Minn. 71. See 17 MICH. L. REV. 429 and 18, *ib.* 320 and 806, for cases where the municipality holds contract rates with the utility. Where the question has been urged by complaining communities before commissions, the latter generally, if not always, have ruled against them on the ground of impracticability of an accurate ascertainment of a rate for each separate municipality, and that it was not unreasonable to treat them as a unit where all were being served by the same company. *Re Rockland Electric Co.* (N. J.), P. U. R. 1915D, 683; *Glenview Improvement Club v. People's Water Co.* (Cal.), P. U. R. 1918F, 187; *Village of Andover v. Empire Gas and Fuel Co.* (N. Y.), P. U. R. 1920A, 702; *Re Chesapeake and Potomac Telephone Co.* (W. Va.), P. U. R. 1921B, 97; *Re Utah Power and Light Co.* (Utah), P. U. R. 1921C, 294; *Re Missouri Gas and Electric Service Co.* (Mo.), P. U. R. 1921D, 687. But in the *Village of Andover* case the commission considered that the contention that the individual city should be the unit in fixing rates was one of some merit and should be considered where circumstances warrant. Likewise, in *Re Missouri Gas and Electric Service Co., supra,* the commission recognized that the utility